



August 29, 2022

Via electronic mail

Re: Hazardous Waste Operating Permit Renewal Application, open burning/open detonation-Clean Harbors Colfax, LLC
LAD 981055791
AI#32096/PER 20170002

On behalf of Central Louisiana Coalition for a Clean & Healthy Environment, and the Louisiana Environmental Action Network, we write to urge the Louisiana Department of Environmental Quality ("LDEQ") to reject ongoing efforts to open burn/open detonate hazardous wastes at Clean Harbors Colfax LLC ("Clean Harbors"), located at 3763 Louisiana Highway 471, Colfax, Louisiana.¹

On March 20, 2020, the groups submitted a comment letter supporting LDEQ's notice of intent to deny Clean Harbors' application for the open burning/open detonation ("OB/OD") of hazardous wastes, explaining that the application—in addition to failing the requirements of *Save Ourselves*, as recognized by LDEQ—violates federal and state hazardous waste law. In particular, 40 C.F.R. § 265.382, incorporated into Louisiana's hazardous waste program at 33 LA Admin Code. Tit. 33, Pt V, § 4533, expressly prohibits the open burning of hazardous wastes in all circumstances except where there are "no other modes of treatment" for explosive hazardous wastes. 40 C.F.R. § 265.382. As detailed in the comment letter, Clean Harbors does not meet the terms of this narrow exception because it failed to establish that its hazardous wastes "cannot safely be disposed of through other modes of treatment," *id.*, including the various alternatives identified and assessed in reports published in 2019 by the U.S. Environmental Protection Agency ("EPA") and the National Academies of Sciences, Engineering, and Medicine ("NAS").² Those reports discuss numerous alternatives to OB/OD, all of which have "lower emissions and less of an environmental and public health impact, would be monitorable, and would likely be more acceptable to the public."³

¹ Central Louisiana Coalition for a Clean & Healthy Environment, and the Louisiana Environmental Action Network Comment Letter (March 20, 2020) (Attachment 1).

² EPA, *Alternative Treatment Technologies to Open Burning and Open Detonation of Energetic Hazardous Wastes* (Dec. 2019) (referred to herein as "EPA Report"), https://www.epa.gov/sites/production/files/2019-12/documents/final_obod_alttechreport_for_publication_dec2019_508_v2.pdf (Attachment 2); National Academies of Sciences, Engineering, and Medicine ("NAS"), *Alternatives for the Demilitarization of Conventional Munitions* at 3-4 (2018) (referred to herein as "NAS Report"), <https://doi.org/10.17226/25140> (Attachment 3).

³ NAS Report, at 4.

Consistent with our comments, EPA recently issued a memorandum reaffirming that “open burning of hazardous waste, including open detonation, is prohibited under RCRA, except for the open burning and detonation of waste explosives, as defined in 40 CFR 265.382, which cannot safely be disposed of through other modes of treatment.”⁴ EPA’s memorandum confirms that Clean Harbors “must demonstrate that [its] waste explosives ‘cannot safely be disposed of through other modes of treatment’ to qualify for the exception and use OB/OD.”⁵ To make such a showing, Clean Harbors “must successfully demonstrate, through an evaluation of alternative technologies, that there are no other technologies that can safely treat each waste stream.”⁶ This is not a one-time obligation: “[p]eriodic reevaluation is required even if the facility has previously made this evaluation,” considering “the findings in the 2019 EPA and NASEM published reports which identify safe available alternative technologies for most, if not all waste streams that are currently being open burned”⁷ EPA’s memorandum is clear that agencies, including LDEQ, “must not permit OB/OD units that do not meet [these] existing requirements” of the federal hazardous waste program.⁸ LDEQ cannot permit Clean Harbors to continue operating its OB/OD units because Clean Harbors is in plain violation of these requirements.

We understand that after the 2020 public comment period closed, Clean Harbors submitted a “revised RCRA Part B Permit Renewal Application,” including information about a new contained burn chamber unit that the facility claims will divert some, but not all, hazardous wastes from the OB/OD operations. Central Louisiana Coalition for a Clean & Healthy Environment, and the Louisiana Environmental Action Network, intend, and reserve their right, to submit comments during the requisite public comment period concerning any new action by the Department on the application. For now, however, we note that Clean Harbors continues to violate RCRA because it has yet to satisfy RCRA’s fundamental requirement to prove that there are no safe alternatives for *all* of the specific hazardous wastes it seeks to open burn/open detonate, and that *any* OB/OD is necessary.

Although Clean Harbors admits that “other technologies, aside from open burn/open detonation, have recently become available and appear to be commercially viable,” it offers no analysis of those alternatives, let alone a demonstration proving that they are not viable for 100% of its hazardous waste stream as required by RCRA.⁹ Nor can Clean Harbors rely on its prior claims rejecting alternative technologies to justify any continued OB/OD operations. As previously explained, those assertions—stated more than five years ago—are unsupported, irrelevant, and conflict with the more recent findings of the 2019 EPA and NAS Reports which are reaffirmed in EPA’s memorandum.¹⁰ The documents available on EDMS show that Clean Harbors has not addressed these deficiencies and inconsistencies, and instead continues to offer bare, conclusory

⁴ EPA Memorandum, *Open Burning and Detonation (OB/OD) of Waste Explosives Under the Resource Conservation and Recovery Act (RCRA)*, at 7 (June 7, 2022) (Attachment 4), https://www.epa.gov/system/files/documents/2022-06/OBOD_Policy_Memo_signed_6.7.22_508.pdf.

⁵ *Id.* (emphasis in original).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* (emphasis in original)

⁹ Revisions to App. Vol. I, Attachment 1-C at 11, <https://edms.deq.louisiana.gov/app/doc/view?doc=12346607>.

¹⁰ See 2020 Comment Letter at 10-12.

claims about the availability of alternatives while failing to satisfy its legal obligation to evaluate alternatives and demonstrate that none exist for each of the hazardous wastes for which it seeks permission to open burn/open detonate.¹¹

With these core failures, Clean Harbors does not qualify for the narrow exception to RCRA's prohibition of the OB/OD of hazardous wastes. LDEQ must therefore promptly reject Clean Harbors' requests to continue OB/OD and instruct Clean Harbors to immediately cease its OB/OD operations in accordance with RCRA's requirements.

Respectfully submitted,

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¹¹ See, e.g., Clean Harbors Response to Request for Additional Information (June 2, 2022), <https://edms.deq.louisiana.gov/app/doc/view?doc=13316502>.